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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

SILICON STORAGE TECHNOLOGY, INC.,

Plaintiff,

v.

XICOR LLC,

Defendant.

CASE NO. CV 10-01515 MHP

**DEFENDANT XICOR LLC'S UNOPPOSED  
MOTION TO VACATE AND WITHDRAW  
THE COURT'S MARCH 22, 2011  
JUDGMENT**

**DEMAND FOR JURY TRIAL**

1 Pursuant to Federal Rule of Civil Procedure 59(e), Defendant Xicor LLC (“Xicor”)  
2 moves the Court, without opposition, to vacate and withdraw the March 22, 2011 Judgment  
3 (Dkt. No. 77), and respectfully shows as follows:

4 Plaintiff Silicon Storage Technology, Inc. (“SST”) brought the instant action seeking a  
5 declaratory judgment of noninfringement and invalidity of U.S. Reissue Patent No. RE 38,370  
6 (the “’370 patent”). (Dkt. No. 1). On December 20, 2010, Xicor asserted a counterclaim for  
7 infringement of “at least” claims 12 and 13 of the ’370 patent. (Dkt. No. 46). The parties filed  
8 cross-motions for summary judgment as to whether claims 12 and 13 of the ’370 patent are  
9 invalid under the rule against recapture. On March 22, 2011, the Court granted SST’s motion for  
10 summary judgment and denied Xicor’s motion for partial summary judgment, stating: “[c]laims  
11 12 and 13 of the ’370 patent are hereby declared invalid for violating the rule against recapture.”  
12 (Dkt. No. 76 at 19). The Court’s March 22, 2011 summary judgment order makes no mention of  
13 – and did not otherwise address in any respect – any claims of the ’370 patent other than claims  
14 12 and 13. Also on March 22, 2011, the Deputy Clerk entered Judgment, which states: “**IT IS**  
15 **SO ORDERED AND ADJUDGED** that plaintiff’s motion for summary judgment is granted  
16 and defendant’s motion for partial summary judgment is denied.” (Dkt. No. 77 (emphasis in  
17 original)). The docket sheet indicates that the case was “terminated” on March 22, 2011.

18 The Court’s March 22, 2011 Memorandum and Order did not, however, dispose of all  
19 issues as to all parties because both the claims and counterclaims asserted in this case encompass  
20 issues of infringement and invalidity of *all* claims of the ’370 patent, including the unmodified  
21 original patent claims. *See* FED. R. CIV. P. 54(a); *see also* 28 U.S.C. § 1295. As a matter of law,  
22 the Court’s March 22, 2011 order granting summary judgment of invalidity as to claims 12 and  
23 13 of the ’370 patent cannot invalidate the entire patent. *See MBO Labs., Inc. v. Becton,*  
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1 *Dickinson & Co.*, 602 F.3d 1306, 1319 (Fed. Cir. 2010) (“When a reissue patent contains the  
2 unmodified original patent claims and the reissue claims, a court can only invalidate the reissue  
3 claims under the rule against recapture.”). Accordingly, Xicor hereby respectfully moves the  
4 Court to vacate and withdraw its March 22, 2011 Judgment (Dkt. No. 77). *See* FED. R. CIV. P.  
5 59(e).

6         On April 6, 2011, attorneys for Xicor and SST participated in a meet-and-confer  
7 conference, during which the substance of this motion was discussed. After reviewing the  
8 motion, SST indicated that it did not oppose the relief sought herein. Accordingly, Xicor  
9 submits that briefing on this motion is complete, and respectfully requests that the Court grant  
10 this motion on an expedited basis.  
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1 Dated: April 12, 2011

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